

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120536-001-SF

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 20th day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 11, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Petitioner, although a resident of XXXXX, Maryland, has health care coverage through the XXXXX. The plan, administered by Respondent Blue Cross Blue Shield of Michigan (BCBSM), is self-funded. Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner's benefits are described in BCBSM's *Community Blue Group Benefits Certificate* (the certificate).

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

In August 2010, Petitioner's primary care physician determined that Petitioner was pre-diabetic and would benefit from receiving diabetes nutrition counseling. The physician

completed a referral form for counseling at XXXXX Diabetes Program, which provides diabetes outpatient educational services. The XXXXX Diabetes Program is part of the XXXXX Hospital system.

The Petitioner took the form to XXXXX and received the XXXXX class for medical nutrition therapy on August 25, 2010. The program was conducted by XXXXX, who is listed on the XXXXX referral form as a “diabetes clinician.” The amount charged was \$180.

BCBSM denied coverage for the class. The Petitioner appealed BCBSM’s denial. BCBSM held a managerial-level conference on March 9, 2011, and issued a final adverse determination dated March 30, 2011, affirming its denial.

III. ISSUE

Is BCBSM required to provide coverage for the Petitioner’s class?

IV. ANALYSIS

Petitioner’s Argument

It is the Petitioner’s understanding that the class is covered under her contract with BCBSM. The Petitioner argues that the class she took was for diabetes education and nutrition as it related to diabetes and therefore should be a covered benefit under her certificate. She believes that BCBSM is required to pay for this care.

BCBSM’s Argument

In support of its decision, BCBSM cites the following provisions in the Petitioner’s certificate of coverage:

Section 5: Coverage for Other Health Care Services

Outpatient Diabetes Management Program

We pay up to the approved amount for selected services and medical supplies to treat and control diabetes when determined to be medically necessary and prescribed by an M.D. or D.O. . . .

Diabetes services and medical supplies include:

* * *

- Diabetes self-management training conducted in a group setting, whenever practicable, if:
 - Self-management training is considered medically necessary upon diagnosis by an M.D. or D.O. who is managing your diabetic condition

and when needed under a comprehensive plan of care to ensure therapy compliance or to provide necessary skills and knowledge

- Your M.D. or D.O. diagnoses a significant change with long-term implications in your symptoms or conditions that necessitate changes in your self-management or a significant change in medical protocol or treatment
- The provider of self-management training must be certified to receive Medicare or Medicaid reimbursement or be certified by the Michigan Department of Community Health.

* * *

Section 6: General Conditions of Your Contract

Care and Services That Are Not Payable

We do not pay for the following care and services:

* * *

- Any services not listed in this certificate as being payable

It is BCBSM's position that denial of reimbursement for the Petitioner's nutritional training is correct because the services were billed to BCBSM as medical nutrition therapy, not diabetic education.

Commissioner's Review

The coverage referenced by BCBSM in Section 5 of the *Community Blue* certificate of coverage is mandated by Section 416b of the Nonprofit Health Care Corporation Reform Act, (BCBSM's governing statute), MCL 550.1416b. Section 416b(1) requires:

A health care corporation shall establish and provide to members and participating providers a program to prevent the onset of clinical diabetes. This program for participating providers shall emphasize best practice guidelines to prevent the onset of clinical diabetes and to treat diabetes, including, but not limited to, diet, lifestyle, physical exercise and fitness, and early diagnosis and treatment.

Consequently, the *Community Blue* certificate includes coverage for "diabetes self-management training." The issue to be resolved in this case is whether the educational program the Petitioner attended constituted, pursuant to the language of the certificate, "diabetes self-management training . . . considered medically necessary upon diagnosis by an M.D. or D.O. who is managing your diabetic condition . . . to provide necessary skills and knowledge."

The specific curriculum of the medical nutrition therapy class is not detailed in any material submitted by the parties. There is agreement that the class provides attendees with written material on diabetes and nutrition. According to a BCBSM letter to OFIR dated May 4, 2011, BCBSM agrees that the class “includes some diabetic nutritional training.”

In the May 4 letter, BCBSM’s analyst stated that BCBSM had contacted the provider who conducted the class but the provider told BCBSM that she could not change the procedure code she had billed. BCBSM did not identify the procedure code or submit any other information about the procedure code used. Petitioner submitted the explanation of benefits forms and her physician’s two diabetes education order forms. The analysis below is based on the materials the parties submitted to the Commissioner for this review.

BCBSM has not asserted that a diabetes education class was not medically necessary for the Petitioner. BCBSM has not asserted that the Petitioner’s physician could not prescribe such a class. BCBSM’s only argument is that the class attended by the Petitioner did not constitute diabetes education. The finding on which BCBSM based its decision is that “[b]ecause the services were billed to BCBSM as medical nutrition therapy, not diabetic [sic] education, payment cannot be approved. . . .” (No actual billing record was provided by BCBSM for this review.)

The referral form completed by Petitioner’s primary care physician is an XXXXX form for physicians to order “diabetes outpatient education services.” The form lists five specific programs: medical nutrition therapy, diabetes education, insulin start (medication management), gestational diabetes education, and pre-diabetes education. Thus, it appears that the XXXXX Diabetes Program provides education programs only for individuals with diabetes issues. All the programs listed on the form relate to diabetes education.

The Commissioner finds that BCBSM had insufficient information on which to base a conclusion that the class in question did not constitute diabetes education. The class was performed by a certified diabetes education professional and was provided by an organization whose sole function is diabetes education as part of a hospital outpatient program. The education was prescribed for the purpose of providing the Petitioner with information to assist her with her pre-diabetic condition. The doctor’s order form includes the diagnosis code “790.20 Pre-diabetes.” These facts, taken as a whole, require the conclusion that the class was for diabetes education.

Therefore, the Commissioner concludes that BCBSM is required to provide coverage for the Petitioner’s educational services received at the XXXXX Diabetes Program.

V. ORDER

BCBSM's final adverse determination of March 30, 2011, is reversed. BCBSM is required to provide coverage for the Petitioner's diabetes education class, subject to any applicable deductibles or copayments. BCBSM shall provide coverage within 60 days and, within seven (7) days of providing coverage, provide proof it has implemented the Commissioner's Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. Made applicable by MCL 550.1952(2). A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.